Supreme Court, U.S.
FILED
05 15 11 AUG 3 - 2006
OFFICE OF THE CLERK

Docket Number _____

SUPREME COURT OF THE UNITED STATES

MICHAEL CHARLES BATIE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Mary C. Corporon #734
Corporon, Williams & Bradford
Attorneys for Petitioner
405 South Main Street, Suite #700
Salt Lake City, UT 84111
(801) 328-1162

QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals, Tenth Circuit's decision to reverse the trial court's dismissal of the indictment against Petitioner, is in conflict with other United States Circuit Court decisions.

2. Whether the United States Court of Appeals, Tenth Circuit misapprehended the constitutional effects that the delays and multiple trials had on Petitioner's constitutional rights to a speedy trial and substantive due process.

3. Whether Petitioner's rights to a speedy trial and to due process have been violated.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW 1

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS 3-4

STATEMENT OF JURISDICTION 4

CONSTITUTIONAL PROVISIONS, TREATISES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE 5

STATEMENT OF THE CASE 5-7

ARGUMENT 7

POINT I. STANDARD OF REVIEW 7

POINT II. SPEEDY TRIAL 7

POINT III. DUE PROCESS. 16

APPENDIX **App Page**

A. Tenth Circuit Court of Appeals Decision ... 18-28

B. District Court Order of November 5, 2004 29-40

C. Transcript of Defendant's Memorandum in Support of Motion to Dismiss 41-44

TABLE OF AUTHORITIES

CASES

Barker v. Wingo, 407 U.S. 514 (1972) 7, 8, 9, 10, 12, 16
Carsey v. United States,
129 U.S. App. D.C. 205, 208-09 (1967).....14, 15
Doggett v. United States, 505 U.S. 647 (1992) 13
United States v. Batie,
433 F.3d 1287 (10th Cir. 2006) 3, 4, 8, 9, 10, 12
United States v. Ingram, 412 F. Supp. 384 (D.D.C. 1976) 17
United States v. Kearns, 5 F. 3d 1251 (9th Cir. 1993) 16
United States v. Rossoff, 806 F. Supp. 200 (C.D. Ill. 1992) ... 16-17
United States v. Salerno, 481 U.S. 739 (1987) 17

CONSTITUTIONAL PROVISIONS

Article III, United States Constitution. 4
Amendment V, United States Constitution. 8,17, 19
Amendment VI, United States Constitution. 5,7, 16, 19

STATUTES

18 U.S.C. § 2113(a), (d) 5
18 U.S.C. §924(c)(1)(A)(ii) 5
28 U.S.C. §1255 4

CITATIONS OF OPINIONS BELOW

The Order and Judgment of the United States Court of Appeals for the Tenth Circuit below was published. It was entered on January 4, 2006, under United States v. Batie, docket #04-4299, found at 433 F.3d 1287 (10th Cir., 2006). A copy of this decision is attached in the appendix hereto.

The Order and Judgment of the United States District Court for the District of Utah, Central Division was unpublished. It was entered on May 20, 2004, under United States v. Batie, docket #2:03-CR-351 TS. A copy of this decision is attached in the appendix hereto.

STATEMENT OF JURISDICTION

The jurisdiction of the United States Supreme Court is defined in Article III of the Constitution of the United States. The Tenth Circuit Court of Appeals entered its Order and Judgment reversing the District Court's dismissal of the indictment and remanding to the District Court on January 4, 2006. The United States Supreme Court

has jurisdiction to review this order and judgment of the Court of Appeals pursuant to 28 U.S.C. §1254.

CONSTITUTIONAL PROVISIONS, TREATISES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

The Respondent failed to prosecute Petitioner within the timeliness requirements of the United States Constitution. Amendment VI of the United States Constitution provides in relevant part that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial."

The United States Constitution, Amendment V provides in relevant part that no person shall "[b]e deprived of life, liberty, or property without due process of law."

STATEMENT OF THE CASE

Petitioner was charged in Federal Court with Brandishing a Firearm During a Crime of Violence and Bank Robbery in violation of 18 U.S.C. § 2113(a) and (d), and 18 U.S.C. § 924(c)(1)(A)(ii).

Petitioner's first jury trial ended on December 11, 2003, the third day of trial, after the district court declared a mistrial when a

government witness, in reply to the U.S. Attorney's direct questioning, stated that he met the Petitioner at a federal prison.[1] The Petitioner's second jury trial ended in mistrial on May 12, 2004, the second day of trial, when a juror saw Mr. Batie being escorted in handcuffs through a hallway of the district court.[2] Finally, after Petitoner's third jury trial, the jury could not reach a verdict and district court Judge Stewart declared a mistrial.[3] The United States Court for the District of Utah, Central Division, after three mistrials granted Defendant's Motion to Dismiss the Indictment on November 5, 2004, declining to allow a fourth jury trial to commence.

---

[1] Pursuant to the court's prior order on Petitioner's Motion in Limine, the government was to refrain from adducing evidence of Petitioner's prior conviction or incarceration.

[2] Pursuant to the court's pretrial order, jurors were not to know that Petitioner was in custody during the trial.

[3] The district court found that "[t]he third trial ended in mistrial due to a "hopelessly deadlocked" jury." See Appendix, p. 39.

The Government appealed the dismissal to the Tenth Circuit Court of Appeals, and the Court of Appeals reversed and remanded. The matter was briefed by the parties in the Tenth Circuit Court of Appeals, and the Tenth Circuit entered its Opinion on January 4, 2006, reversing and remanding. (Appendix p. 22-32).

ARGUMENT

POINT I: STANDARD OF REVIEW

Defendant's entire Petition is based upon an analysis of his rights under the United States Constitution. For this reason, he is entitled to de novo consideration of all issues raised.

POINT II: SPEEDY TRIAL

The Tenth Circuit's analysis of the Sixth Amendment right to a speedy trial does not comport with prior decisions by this Court.

This Court addressed the question of what constitutes a speedy trial in Barker v. Wingo, 407 U.S. 514, 530 S.Ct. 2182, 33 L.Ed. 2d 101 (1972). In Barker, 407 U.S. at 530-32, this Court set out a four-part balancing test for determining when a person's right to a speedy trial has been violated: the length of the delay, the reason

for the delay, whether a defendant asserts his right to a speedy trial, and prejudice to the defendant. The Court further stated that:

> The right to a speedy trial is generically different from any of the other rights enshrined in the Constitution for the protection of the accused. In addition to the general concern that all accused persons be treated according to decent and fair procedures, there is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused.

Id. at 519. The Court of Appeals ruling here lacked the depth of analysis and consideration contemplated by this Court in Barker and deprives the Petitioner of his Constitutional right to a speedy trial.

a. Length of Delay

The Court of Appeals stated that the length of the delay was balanced in favor of Petitioner: "The government should not have needed over seventeen months to prepare a case against Mr. Batie for armed bank robbery and brandishing a firearm." United States v.

Batie, 433 F.3d 1287, 1290 (10th Cir. 2006). The Tenth Circuit's analysis of the length of delay is consistent with the Barker analysis and the Constitution.

b. Reason for Delay

This Court stated in Barker, that "A more neutral reason [for delay] such as negligence or overcrowded courts should be weighed less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." Id. at 531.

The Court of Appeals wrote, "The reason for a delay weighs against the government in proportion to the degree to which the government caused the delay." Batie at 1291. Furthermore, the court made findings that eight of the seventeen and one-half months that the trial was delayed was due to motions filed by the Petitioner. However, the Court of Appeals failed to give adequate deference to the trial court's findings that "[i]t finds no wrong-doing by any party." (Appendix p. 38). Moreover, the Court of Appeals failed to give deference to the district court's finding that "the delay and the

accompanying tortured procedural history in this case have reached the point where relief is warranted, despite the parties' intentions." Id.

Furthermore, the eight month delay attributed to Petitioner and mentioned in the appellate court's findings, was largely due to the first two mistrials. With each mistrial the Petitioner needed some time to assess his legal position and to ensure that expert and fact witnesses were available to testify in a second and third trial. Thus, Petitioner's motions to continue were substantially related to the first two mistrials that should be weighed in favor of the Petitioner.

c. Assertion of the Speedy Trial Right

Barker asserts that whether or not a defendant asserts his right to a speedy trial is indicative of whether or not that right has been violated. Barker at 531 ("The more serious the deprivation, the more likely a defendant is to complain.").

The Court of Appeals stated that the assertion of the right to a speedy trial may be the "most important" factor. Batie at 1291. That court's findings rest on the fact that Petitioner moved for three

continuances. What is glaringly absent from the court's analysis are the factual findings in the district court's order dismissing the indictment that "Defendant asserted his right to speedy trial, which was denied by this Court. However, the procedural posture and circumstances of this case since then have altered that analysis." (Appendix p. 39). The court of appeal's decision does not give proper deference to the district court's factual findings that Petitioner had asserted his speedy trial right after the second mistrial and the third mistrial further boosted Petitioner's speedy trial argument. Furthermore, the Court of Appeals' decision simply ignores the fact Petitioner asserted his right to a speedy trial earlier. Finally, the Circuit Court's opinion does not recognize that Petitioner was ready to proceed with all three trials and through no fault of his own, the government could not get a conviction, and each trial was delayed.

Petitioner clearly asserted his right to a speedy trial, both through motions to the district court and his actions through the course of three failed trials.